LeMond Cycling, Inc. v. Trek Bicycle Corporation
Doc. 139 Att. 7

ZASTROW EXHIBIT 51

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DEPOSITION OF WARREN GIBSON

Taken on March 17, 2009

LEMOND CYCLING, INC. -VS- TREK BICYCLE CORPORATION

PAGE 1 TO PAGE 54

COMPLIMENTARY CONDENSED

Advantage Reporting

ARS

Services, LLC

1083 Lincoln Ave.
San Jose, CA 95125
Phone 408-920-0222
Fax 408-920-0188

Q. And what was your understanding about the place that PTI would sell these products if they could enter into a deal with Mr. LeMond? Was it going to be an independent bike dealers or somewhere else?
A. No. It was going to be in the mass market nationally through like Target Stores but looking to go into all big-box stores, as many as possible. And the initial --
(Interruption)
-- THE WITNESS: -- the initial situation was through Target Stores.
Q. BY MR. WEBER: Okay. Now in the bike industry there is a dividing line between the independent bike dealers and mass merchants; is that right?
MS. RAHNE: Object to the form.
THE WITNESS: Yes, that there is -- the independent bike dealers are very afraid of the mass market. Generally our selling was very low margins in selling in volume. It makes it very difficult for the independent bike dealer to compete with a mass market operation.
Q. BY MR. WEBER: Okay. I am going to hand you what we've marked as Exhibit 128.
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(Defendant's Exhibit 128, Greg LeMond - Name Usage Proposal, was marked for identification.)

Q. BY MR. WEBER: This is a memo dated June 3rd, 1999, from David Haaf to you regarding Greg Lemond's proposal. Have you seen this before?

A. Yes, I have.

Q. So by June 3rd, 1999, discussions with PTI had advanced to the point where potential deal points had been reduced to writing?

A. That's right, yes.

Q. Okay. And if you could just take a moment to skim through that and see -- do you remember having discussions with Mr. Haaf on or before June 3rd, 1999, on those terms?

A. Yes.

(Defendant's Exhibit 129, e-mail dated Friday, June 4th, 1999, was marked for identification.)

Q. BY MR. WEBER: Now let me hand you an exhibit from the next day, Exhibit 129, which is an e-mail dated Friday, June 4th, from Mr. Haaf to you: Hi, Warren. This is a copy of what I sent to the New York office at 1:20 a.m., et cetera.

Do you see that?

A. I do.

Q. Do you recall getting this from Mr. Haaf in -- on or about June 4th, 1999?

A. Yes.

Q. And if we look at the bottom of -- the last line on the first page, there is item -- deal point Number 2: $500,000 minimum annual compensation to Greg guaranteed for ten years.

Do you see that?

A. Yes, I do.

Q. So that by June 4th, 1999, Mr. LeMond and PTI were discussing a ten-year deal at $500,000 per year?

A. That's correct.

Q. Now at the time of these discussions, Mr. LeMond was still in a contract with Greg that covered parts and accessories, right?

MS. RAHNE: Object to the form.

THE WITNESS: I think you mean Trek. Mr. LeMond was in a contract with Trek.

Q. BY MR. WEBER: I misspoke, sorry. Let me start over.

At the time of these discussions Mr. LeMond was still in a contract with Trek that gave Trek the right to sell parts and accessories with his name?

MS. RAHNE: Object to the form.

THE WITNESS: That's correct.

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(Defendant's Exhibit 130, Memo dated June 5th, 1999, was marked for identification.)

Q. BY MR. WEBER: Exhibit 130 is a memo from the next day, June 5th, from you back to Mr. Haaf; is that correct?

A. Yes, it is.

Q. And do you recall selling Mr. Haaf this -- sending Mr. Haaf this memo?

A. Yes, I do.

Q. Okay. And the first line of Exhibit 130 says: I hope you have had time to review the revised nonbinding letter of intent that I faxed to you this morning. I just spoke with Greg LeMond and he is interested in this potential opportunity and is looking forward to our conference call on Monday June 7, 1999, at 230 p.m. eastern district time.

Right?

A. That's correct.

Q. So by June 5th, 1999, would it be fair to say that discussions with PTI had gotten very serious and specific?

A. Yes, they were.

Q. Okay. Now did you have an understanding about whether Mr. LeMond disclosed any of these discussions he was having with Trek -- with PTI to Trek

or whether he made efforts to keep it secret?
MS. RAHNE: Object to the form; foundation.
Go ahead, if you know.
THE WITNESS: That was to be kept very confidential at that time and not disclosed to Trek.
Q. BY MR. WEBER: And how do you know that?
A. Well, he told me.
Q. Okay. Did you have an understanding about why he wanted to keep it secret from Trek?
A. He had an ongoing contract with Trek and it was at -- probably two reasons: One, he had a current contract in place and he was negotiating a new contract the same -- for the same products and so there was a conflict on the -- on having a contract in place and negotiating for a new contract. And two, if Trek knew that he was negotiating with a company that wanted to take products into the mass market, they probably would have not let him out of the contract that he was in with them because it would have been a complete -- completely against their business plan and the way they do business.
(Defendant's Exhibit 131, fax transmission dated August 10, 1999, was marked for identification.)
Q. BY MR. WEBER: Okay. I am going to hand you a document we've marked as Exhibit 131. That is a fax

from Mr. Sidney Bluming in New York to Michael Sproule with a copy to you and Mr. LeMond dated August 10, 1999. Do you see that?

A. Um-hum. I do.

Q. And the first line refers to: In accordance with the deal memo of June 22nd -- and so on, right?

A. Yes.

Q. Let me direct your attention to the second paragraph, the last line. It states, quote, Noting that we all agreed, at least for the time being, that PTI should remain in the background.

Is that right?

A. Yes.

Q. And did you have an understanding of what Mr. Bluming was talking about?

A. Again, I -- Greg did not want Trek to know anything about the potential PTI contract because Trek would never release them from the accessory and peril contract that he was currently in with them at that time.

Q. Now in doing the PTI deal, was -- to your knowledge was Greg worried that taking his brand into the mass market could negatively affect his bike sells?

MS. RAHNE: Object to the form.

THE WITNESS: Yes, he was at first, and as he thought through it he decided that -- and listening to the PTI folks, he decided that it would be something that would be worth the risk if it was appropriately handled.

Q. BY MR. WEBER: Right. And did Greg protect his financial downside by obtaining a ten-year $500,000 per year guarantee from PTI?

A. Yes, he did.

Q. So his financial downside was protected if his bike sales suffered, right?

A. I -- that's correct.

Q. But Trek was hung out to dry?

MS. RAHNE: Object to the form.

THE WITNESS: That's correct.

Q. BY MR. WEBER: Let's move forward, then, over the next few years 1999, 2000, 2001. Lance Armstrong was having success in the Tour de France, right?

A. That's right.

Q. And he was getting a lot of attention because of his personal story and athletic success?

A. Yes.

Q. And as a result or in conjunction with that, road bikes as a market segment were experiencing a lot of success, weren't they?

A. A lot -- very much success, yes.

MS. RAHNE: Objecting to the forms of your questions. They're terribly leading, but go ahead and continue if you would like.

Q. BY MR. WEBER: Did you -- can you tell me whether or not you knew that -- how road bikes were doing in connection with Lance's success on the bike?

A. Well, only from being involved in the industry, the bicycle industry, that when an American is having success in Europe in bicycle racing, bicycle sales increase. Same thing happened when Greg was having his success prior to Lance; bicycle sales increased. And then there was a downswing after Greg retired, and then when Lance came on to the scene bicycle sales in general in the United States increased.

Q. Did you have discussions with Mr. LeMond about how he might approach Lance and embrace or reject Lance's success?

A. Yes, I did.

Q. Tell us about that.

A. I suggested that Mr. LeMond ally and embellish Lance as a colleague for business reasons; that if he was supporting Lance and we'll say mentoring him, because he was the retired former champion, that could help LeMond bicycle sales with the bicycle consumer. With Greg working closely with Lance it would have drove his sales, which I believe at that time may have been somewhere between 15- and $17 million. I think that it could have drove those sales up substantially. I would hate to put a number on it because who knows.

Q. Did you have discussions with Mr. LeMond about how big the number could get?

A. I always thought -- based on Gary Fisher's sales being pretty substantial at that time, I always thought that Greg's sales could go to 30-, $40 million.

Q. Now beginning in 2001 Mr. LeMond began making some very critical comments about Mr. Armstrong; is that right?

A. Yes.

Q. Were you -- did you have discussions with Greg about the impact of those comments and what it was doing to his bike brand?

A. Yes, I did.

Q. And tell us about that.

A. I suggested that Greg leave his personal feelings about what he felt about Lance alone due to business reasons, not only his business reasons but my business reasons as well, because if Greg was a popular and successful former athlete aligned in business -- in

a business relationship with Lance, it would not only drive overall bike sales, LeMond bike sales, but it would make it easier for me to get additional contracts for Greg. Consequently I would make more money also.
Q. Now by that time, by 2001, you had known Greg for 17 years or so, right?
A. Yes.
Q. And worked with him in a number of deals?
A. Yes, I did. Yes, I had.
Q. Okay. And had travelled with him and engaged in a number of personal and social activities as well?
A. Yes.
Q. And did you have a number of discussions with Greg about Lance Armstrong and Greg's attitude towards Lance?
A. I spoke to him on many occasions that -- for business reasons -- he ought to keep his personal thoughts tempered as opposed to coming out and making his negative comments, which I felt was -- initially was due to pure jealousy of Lance's success.
Q. What do you mean when you say you thought Mr. LeMond was jealous of Lance's success?
A. Well, Greg is a very competitive guy. Any world-class athlete is very competitive, and most world-class athletes are very proud of their successes

and -- as Greg was of his successes, and I felt that Greg was initially doing this as just pure jealousy just from knowing him over the years.

Q. Right.

A. He had certainly been on the campaign trail about that ever since, so...

Q. Were you aware in the summer of 2001 that Mr. John Burke at Trek had called up Greg and tried to mediate the dispute between Greg LeMond and Lance Armstrong?

A. Yes.

Q. And how did you know that?

A. Greg told me about it.

Q. Did Greg tell you whether he had secretly taped Mr. Burke?

A. Yes, he did.

Q. What did he say?

A. Well, he indicated that he had tapes that -- if there was at any time that Trek wanted to terminate his relationship, that he had tapes that would incriminate John Burke and that he felt that they were powerful enough that they -- you know, that Trek would not terminate him.

Q. Do you have any understanding that Greg was going to use tapes for leverage against Trek?

MS. RAHNE: Object to the form.
Go ahead.
THE WITNESS: That was his intention.
Q. BY MR. WEBER: And what do you base that on, something he said or something else?
A. No. Purely what he told me.
Q. In 2004 there was an additional round of publicity associated with some of Mr. Lemond's comments against Mr. Armstrong. Were you aware of consumer reaction to those comments?
A. We had a website and -- at that time with a bulletin board, and the bulletin board had an overwhelming amount of comments on the bulletin board.
Q. And did Mr. LeMond ask you to do anything with the bulletin board?
A. He asked to have the bulletin board shut down.
Q. Did he say why?
A. He didn't care for the negative comments that were coming out on the bulletin board about him.
Q. Were you aware that in August of 2004 Trek sent Mr. LeMond a notice of breach of contract?
A. I was aware of that.
Q. And were you asked to do anything in terms of trying to find a new business partner for Mr. LeMond?

A. Greg asked me if I would speak to Specialized Bicycle companies, Michael Sinyard, over in Morgan Hill, California.

Q. Okay. And was Mr. Sinyard someone you knew?

A. I knew Mr. Sinyard, yes.

Q. For -- for a long time or --

A. Over the years in the bike industry, yes.

Q. Okay. So did you speak with Mr. Sinyard?

A. I did.

Q. And did -- did he tell you anything about whether Mr. LeMond and what he was doing was very helpful to the industry or was very negative to the industry or something else?

A. Well, first he felt that Greg was -- the money or the royalty percentage Greg wanted, that he asked to say, This is what I would want if I was with another company. Mr. Sinyard's thought was too high because of the margins in the bike industry for sales of bikes was too small.

Q. And what was the margin he was asking?

A. Five to seven percent.

And he then said that he felt that the negative publicity that Greg was generating for the bicycle industry was not good at all and he would not like to have that situation in his company. And that

he said that he wouldn't be interested in taking Greg on even with a different brand of bike. Kind of like not trying to say this isn't really associated with Specialized. He said he just didn't want anything to do with Mr. LeMond at that time.
Q. Do you know whether approaches were made to other industry companies like Giant or Merida or Pacific?
A. Yes.
Q. And how do you know that?
A. Greg told me.
Q. And what was your understanding about the reaction that was -- that those companies --
A. Well, another gentleman -- and I can't tell you his name -- researched that for him. And according to Greg, nobody wanted to provide the opportunity to Greg to put their -- his name on their bikes.
Q. Was that something Mr. LeMond told you personally?
A. Yes.
Q. Now in December of 2004 were you aware that Mr. LeMond sent a threatened lawsuit to Trek --
A. Yes.
Q. -- threatening to make tapes public if Trek did not continue to do business with Mr. LeMond?

personally maintained?
A. Yes.
Q. And did you maintain those records in connection with the work you were doing on behalf of Mr. LeMond?
A. Yes, I did.
Q. Was Mr. LeMond aware of the work that you were doing on his behalf with respect to the bicycles?
A. Yes.
Q. And how do you know that?
A. Well, he would always -- he always had to get his approval before you would give a bike out to somebody and -- and he would want to know what it was being sold for. He would tell you what he would want to sell it for.
Q. Okay. Well, when you say you had to get his approval and find out from him what he wanted to sell it for, what do you mean? Weren't all the bikes just sold for approximately what he paid for?
A. No. They were -- there was like a -- three levels. It's like close friends, very close friends; there was somewhat close friends; and then there was people that he wanted to provide bikes to for one reason or another. And so he would generally take the very close friends and let them have it -- have the

bicycles for his cost, and he would let pretty close friends, or maybe that weren't as -- as -- it was hard to say, you know; it was just kind of a nebulous area in there, but there would be a little bit more money, and then for people that he really didn't know, but for one reason or another he wanted to provide them a bike, he had set up a price structure that was close to wholesale, a little bit below wholesale.

Q. Okay.

(Defendant's Exhibit 132, LeMond Bicycle file, was marked for identification.)

Q. BY MR. WEBER: For ease of reference, I have made a copy of your original file and we have marked that as Exhibit 132, and it runs from Bates numbers Gibson 370 on Page 1 to Gibson 564 at the end. So we can work off the Bate stamped set --

A. Okay.

Q. -- so we can be on the same page of what documents we are looking at.

First of all, if we look at the first page, Gibson 370, do you recognize that as a photocopy of the folder you have in front of you of original documents?

A. Yes.

Q. Let's turn in to several pages, to Bates Page 373 and 374, the 2001 Fisher and LeMond Price List. Do

you see that?
A. Yes, I do.
Q. And if we could turn to the second page, we see there four columns of pricing under LeMond, right?
A. Yes.
Q. And there is some handwriting on there, Shipping Ground $50 Additional, do you know whose handwriting that is?
A. That's my handwriting.
Q. Okay. Now these four columns, there is an Advertised column, a Level 1 column, a GL Prices, and Friends prices. Do you see that?
A. Yes, I do.
Q. And what was your understanding about what those four columns were?
A. The advertised price is what Trek would advertise the bike for sale.
Q. For a consumer?
A. For a consumer. Yes, for a consumer from Trek.
Q. So taking a Tete de Course, for example, at the bottom of the column.
A. Yes.
Q. The consumer price for that product would be $4,499.99?

A. That's correct.
Q. Category 2, Level 1, did you have an understanding what that was?
A. Level 1 was the bicycle dealer would have to buy a number of bikes, and they had several different levels, Level 1, Level 2 and Level 3, and it depended on how much -- how many bikes the guy -- the dealer bought at what level he would get the bikes. But we will say the first level, being as maybe they bought one to three bikes, would be for a -- staying on Tete de Course, would be $2,679 Trek selling the bike to the Trek bicycle dealer.
Q. So the dealer would pay 2,679. What is the third column?
A. The third column is the price that Greg would get that bike for if he desired to get a bike.
Q. So he could get a Tete de Course under the 2001 pricing list for how much?
A. $1,804.
Q. Okay. So $875 less than a Level 1 dealer?
A. That -- that's -- yeah, that's close, yes.
Q. Okay. Then what is the fourth column, the Friends column?
A. The Friends column is what Greg would want to sell that to -- or provide the bike to for someone that

may have been a celebrity or someone that he wanted to make that third level that he would want to provide that bike for, and that's what -- if I was going to provide it to Bob Tobin, he would say, Okay, I want to have Bob pay $2,503.

Q. Okay. So approximately $700 more than Greg paid for the bike?

THE WITNESS: Yes.

MS. RAHNE: Object to the form.

THE WITNESS: $700 more, yes.

Q. BY MR. WEBER: And that -- that would be profit to Greg?

MS. RAHNE: Object to the form.

THE WITNESS: Yes.

Q. BY MR. WEBER: Let's move ahead to -- why don't you set that price list to one side because we're going to be referring back to it. Just put it off to the side.

Let's move ahead several pages to Bates page Gibson 383.

A. Okay.

Q. And what is that? What are we looking at here?

A. Right here we're looking at a -- a cashier's -- a cashier's check.

Q. Made payable to whom?
A. Payable to LeMond Cycling Inc.
Q. For how much?
A. For $2729.99.
Q. Okay. And does the check indicate what kind of bike is being purchased?
A. It does. It's a Tete de Course, 51 centimeter.
Q. Okay. And if we refer back to the price list, it appears that this person got a bike at the Friends price, somewhat --
A. Well, over Level 1 price. Over wholesale price, yes.
Q. Okay. So although Greg was able to get that bike for $1800 -- I'm sorry --
A. That's right, 1804.
Q. -- 1804, this person paid 2729.99?
A. That's correct.
Q. Let's move a few more pages in to Bates Page 399.
A. Okay.
Q. What are we looking at here?
A. We are looking at another cashier's check for $2,553 paid to the order of LeMond Cycling Inc. and -- jeez, and it's for -- from Tony Basuini for 155

centimeter Tete de Course.
Q. Does that reflect what that person paid for the Tete de Course?
A. Yes, it does.
Q. Okay. And there is handwriting on there: Sent to Muffy 8-13-01. Whose handwriting is that?
A. That's my handwriting.
Q. What does that note indicate?
A. That's a note that I sent that cashier's check to Mary -- Muffy's name is Mary Hague. Mary Hague was Greg's administrative assistant, and that check was sent so Mary Hague on 8-13-01 for payment of that bicycle to Greg.
Q. All right. So did you have an understanding whether Mary Hague was aware of the transactions that were going on in bicycles and the amounts that were being charged to third parties for them?
A. She did.
Q. And what was your interaction with her when it came to bike sales and -- and setting up price for a particular purchaser?
A. The price -- the prices were always set by Greg. I mean, he generally would say what to do. Mary Hague apparently received the money. And at first it was sort of -- it was done between myself, Greg and

myself and parties who wanted to buy bicycles. Then -- and I would speak to Elisabeth Huber at Trek personally. And Greg changed that down the road -- and I am not exactly sure what year that was but it could have been like 2002 or 2003 -- where he no longer wanted anyone to speak directly to Trek; that he would speak to Mary Hague and Mary Hague would speak to Trek, Elisabeth Huber who handled the ordering of bikes for Trek on Trek's behalf.

Q. Did you have an understanding as to why Greg made that change?

A. No. He -- well, he said -- he said it was for bookkeeping purposes.

Q. Okay. Let's move ahead a few more pages to Bates page Gibson 406.

A. Okay.

Q. And there is a check here from Kirk Bowman on June 22nd, 2001. There is another transaction on the page, but focusing on the Bowman transaction. What transaction is documented here?

A. Well, this is a check, June 22nd, '01, made out to LeMond Cycling Inc. for $2,550 for one 61 centimeter Tete de Course LeMond Ti bike for Kurt Bowman and that was a bike -- a check for a bike that Kurt Bowman was to receive.

Q. So what these people -- these people -- Mr. Bowman, again, was paying significantly more than Mr. LeMond paid for the bike, right?
A. Yes.
MS. RAHNE: Object to the form.
THE WITNESS: Yes.
Q. BY MR. WEBER: In addition to Exhibit 132, I also made copies of your other bike original documents. First, take a look at the original folder and tell us what it contains.
A. These are still memorandums from Trek and photocopies of checks, and this is from 2002 to 2004.
Q. Okay. And were those documents that you kept?
A. These are documents I kept, yes.
Q. Did you keep those documents in connection with your work on behalf of Mr. LeMond?
A. Yes.
Q. And what do those documents reflect?
A. These documents reflect bicycles that were purchased from Greg or given away by Greg during that period of time and it reflects the -- the -- throughout via photocopy of the check what the individuals paid for it. On some of these invoices from Trek -- or Fisher -- Fisher Bicycle is a subsidiary license